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TRANSCRIPT OF PROCEEDINGS

DEC - 8 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

IN RE APPLICATIONS:

MM DOCKET NO. 93-56

CHESTNUT BROADCASTING COMPANY

Ogden, Utah

STREET STRYDER

Spanish Fork, Utah

DATE OF CONFERENCE: November 24, 1993

VOLUME: 2

PLACE OF CONFERENCE: Washington, D.C.

PAGES: 17-25

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DEC - 8 1993

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CHESTNUT BROADCASTING COMPANY )

MM DOCKET NO. 93-56

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The above-entitled matter come on for pre-hearing conference pursuant to Notice before Judge John Frysiak, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Room 223, on Wednesday, November 24, 1993, at 9:00 a.m.

APPEARANCES:

On behalf of Chestnut Broadcasting Company:

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Shainis & Peltzman  
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Washington, D.C. 20037  
(202) 857-2946

On behalf of Street Stryder:

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1001 22nd Street, N.W., Suite 350  
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(202) 659-5700

On behalf of Mass Media Bureau:

PAULETTE LADEN, Esquire  
Mass Media Bureau  
2025 M Street, N.W., Suite 7212  
Washington, D.C. 20554

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25	Conference began: 9:00 a.m.	Conference Ended: 9:14 a.m.

## P R O C E E D I N G S

JUDGE FRYSIK: Good morning all. This is a pre-hearing conference for Ogden, Utah. May we note your appearances?

MR. SHAINIS: For Chestnut Broadcasting, Aaron Shainis.

MR. MARTIN: For Street Stryder, Harry Martin, of Reddy, Begley & Martin.

MS. LADEN: For the Chief of the Mass Media Bureau, Paulette Laden.

JUDGE FRYSIK: All right, thank you. Well, I guess we're in for a progress report. Who's going to start?

MR. SHAINIS: Your Honor, if you'd like, I will.

JUDGE FRYSIK: All right.

MR. SHAINIS: As you are aware, we have filed I believe four progress reports in this proceeding. Negotiations are currently ensuing with a buyer. And we are cautiously optimistic we will be able to finalize those in the not too distant future.

I would request with your indulgence, because of the sensitive nature of the negotiations that we're, we're going through, that we be afforded another continuance. And I would request a 45-day continuance.

MS. LADEN: Your Honor, we would have to oppose that. It's been 6 -- we got a 6-month continuance already.

1 We have discovery outstanding that hasn't been responded to  
2 by -- I, I should correct that to say that Devine has not  
3 responded to any of our discovery. Stryder has responded to  
4 some of it. And Your Honor, we, we need to prepare the case  
5 for hearing. It's been 6 months already. And I'd like to  
6 start discovery.

7 JUDGE FRYSIK: Mr. Martin.

8 MR. MARTIN: Your Honor, we filed our second  
9 progress report last evening and reported that we happily are  
10 able to say that we have made a deal to sell the station to a  
11 minority controlled company. We signed a letter of intent  
12 with Garcia Broadcasting on November 12th. And I have  
13 prepared all the necessary contracts, promissory notes,  
14 security agreements and forwarded them to counsel for the  
15 buyer out in Salt Lake City. And as I reported in the second  
16 progress report filed last evening, we expect to be able to  
17 have everything ready to go by the end of December, by  
18 December 31.

19 It could be sooner. I think the main determining  
20 factor will be the, the appraisals. We don't have a lot of  
21 control over those people because of the holiday schedule.  
22 It's a holiday situation. It's difficult to --

23 JUDGE FRYSIK: I think you indicated that the buyer  
24 also retained an appraiser.

25 MR. MARTIN: Right. He -- the buyer in a different

1 configuration already had obtained an appraisal. But the  
2 appraisal in my view is inadequate. So I took the liberty of  
3 writing a letter to the buyer and telling him how to fix it.  
4 And my understanding is that they're in the process of doing  
5 that.

6           So we're pretty much set in terms of completing the  
7 process. I would support Mr. Shainis's motion for a 6-week  
8 continuance. As I said, we're going to need at least 5 weeks.  
9 And the holidays are upon us. The stations clearly are both  
10 going to be sold through the distress sale process. I don't  
11 think anything's going to be served by moving through  
12 discovery here in the holidays. Certainly Your Honor could  
13 keep our feet to the fire by giving us 6 weeks.

14           JUDGE FRYSIK: All right. Mr. Shainis, you have  
15 not identified your potential buyer.

16           MR. SHAINIS: That is correct, Your Honor. There,  
17 there --

18           JUDGE FRYSIK: Are you ready to do so?

19           MR. SHAINIS: There are two reasons for that, Your  
20 Honor. One is I do not know the name of the potential buyer.  
21 I am not involved directly in the negotiations, so I do not  
22 know the name of the buyer. The second reason is, Your Honor,  
23 my client would like not to identify the buyer until after the  
24 negotiations have been completed.

25           But I, I can tell you this. A draft contract as I

1 reported -- a contract has been drafted, reviewed. I've been  
2 told that the attorney who represents the buyer then went on a  
3 month vacation. Or the principle, I'm sorry, went on a month  
4 vacation for the buyer. Then when that principle returned,  
5 the buyer's attorney went on a vacation for a week, has now  
6 returned, and I believe a second draft contract has been done  
7 and is being negotiated.

8 JUDGE FRYSIK: All right. Are the two applications  
9 tied to one another in any way?

10 MR. MARTIN: The Bureau has informally advised us  
11 that they are. That they won't let one of us go to hearing  
12 unless both do. We have no intention of going to hearing,  
13 Your Honor. We have a buyer. And I would --

14 MR. SHAINIS: But Your Honor, if the Bureau -- and  
15 I'm not trying to articulate the Bureau's position. We don't  
16 want to go to hearing either. Unfortunately, the Bureau is,  
17 is taking the position that if one of us distress sales and  
18 the other doesn't, neither of us can distress sale.

19 MR. MARTIN: We don't think that has any basis in  
20 precedent or policy but --

21 JUDGE FRYSIK: Well, that issue is not before us  
22 right now. I was just --

23 MR. MARTIN: No, no. I understand.

24 JUDGE FRYSIK: -- just wondering. I was thinking  
25 out loud actually.

1 Well, all right. I'm going to accede to your wishes  
2 partly. I am going to set a procedural schedule. And I'll  
3 give you some time before we restart discovery. So it would  
4 behoove that you settled your matters by the end of this year.  
5 Okay?

6 So here will be my, my procedural schedule. You  
7 will resume discovery on January the 3rd. All right? And  
8 you'll complete discovery by February the 10th. You will  
9 exchange your direct case on February 24th. And you will file  
10 oppositions to witnesses for notification, or you'll notify  
11 each other of witnesses and desire for cross-examination on  
12 March 10th. And you'll file oppositions to those requests on  
13 March 17th. And we'll have a hearing here on March the 24th  
14 if there is any need to have one.

15 MS. LADEN: Your Honor, may, may I seek  
16 clarification?

17 JUDGE FRYSIK: Yes.

18 MS. LADEN: You gave a date, January 3rd, to resume  
19 discovery. I have, as I indicated earlier, outstanding a  
20 request for admissions to Devine and request for production of  
21 documents to both Devine and Stryder. I'd like to have those  
22 be due to me on January 3rd. Because I had filed them  
23 earlier. They have had copies.

24 JUDGE FRYSIK: Yes.

25 MR. SHAINIS: Your Honor, what I would request is



1 for personal reasons, I'm being -- I'm getting married the end  
2 of December. And January 3rd would put it pretty tight. I'd  
3 like, assuming Ms. Laden go along with this, to heed to her  
4 request and make that January the 15th.

5 JUDGE FRYSIK: All right. Granted.

6 (Pause.)

7 JUDGE FRYSIK: All right, so the schedule is clear  
8 now. We begin -- we resume discovery January 15th. You're  
9 under an obligation to provide the documents that have been  
10 requested, Mr. Shainis.

11 MR. SHAINIS: Yes.

12 JUDGE FRYSIK: And then you will complete discovery  
13 by February the 10th. You'll exchange direct case on  
14 February 24th. Notify the witnesses you need for cross-  
15 examination on March 10th. File oppositions thereto on  
16 March 17th. Hearing here on March -- this is all the time I  
17 can give you. We've been very generous in --

18 MR. SHAINIS: I appreciate that, Your Honor. This  
19 hopefully will be a moot point. I note, however, if my memory  
20 serves me correctly that March 24th is the convention of the  
21 NAB. I'm assuming there would be some indulgence if, if it  
22 does turn out that we're going to be going to hearing with  
23 that, with the hearing date. Or can we just set a week after  
24 that now?

25 JUDGE FRYSIK: The week after 24th?

1 MR. SHAINIS: Yeah. I'm just concerned there's the  
2 NAB convention commencing I believe on the 24th.

3 JUDGE FRYSIK: Yeah. Well, the week after that is,  
4 is the week before Easter. I don't know, we might have  
5 trouble traveling and whatever. If we're going to postpone  
6 the hearing date, it would have to be --

7 MR. SHAINIS: As I said, it may very well be a moot  
8 point.

9 JUDGE FRYSIK: Yes. Why don't we wait until we get  
10 to it --

11 MR. SHAINIS: Fine. Thank you.

12 JUDGE FRYSIK: We would have to go into April. It  
13 would --

14 MR. SHAINIS: Okay.

15 JUDGE FRYSIK: -- have to be after Easter.

16 MR. SHAINIS: All right.

17 JUDGE FRYSIK: All right. Anything else before us?  
18 (No response.)

19 JUDGE FRYSIK: Well, I appreciate your endeavors to  
20 try to get rid of this case.

21 MR. MARTIN: It's not been easy, Your Honor.

22 JUDGE FRYSIK: I can appreciate that. Utah is a  
23 lonely place. Okay, thank you. We stand adjourned.

24 MR. SHAINIS: Thank you, Your Honor.

25 (Whereupon, at 9:14 a.m., the hearing was recessed.)

**CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER**

IN APPLICATIONS OF CHESTNUT BROADCASTING COMPANY

**Name** AND STREET STRYDER

MM DOCKET NO. 93-56

**Docket No.**

WASHINGTON, D.C.

**Place**

NOVEMBER 24, 1993

**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 17 through 25, inclusive, are the true, accurate and complete transcript prepared from the reporting by BARBARA J. LORD in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

December 3, 1993

**Date**

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